

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHRISTOPHER KING, J.D. A/K/A  
KINGCAST, and JOHN NOVAK,

Plaintiff(s),

V.

LIQUOR AND CANNABIS BOARD OF  
THE STATE OF WASHINGTON et al.,

Defendant(s).

CASE NO. 2:20-cv-01494-TL

ORDER DENYING JOINDER OF  
NEW PLAINTIFF, GRANTING  
DEFENDANTS' MOTION TO  
DISMISS, AND STRIKING  
PLAINTIFFS' MOTIONS FOR  
JUDICIAL NOTICE AS MOOT

This matter is before the Court on Plaintiffs' Request for Permissive Joinder and Request to Moot Defendants' 12(b)(1) Motion to Dismiss (Dkt. No. 84) and Defendants' Motion to Dismiss Pursuant to FRCP 12(b)1, 2 (Dkt. No. 95). The Court also addresses Plaintiff's request for relief from the deadline to file a response in opposition to Defendants' motion to dismiss (Dkt. No. 101), as well as Plaintiffs' Rule 201 motions for judicial notice (Dkt. Nos. 75, 94). Having reviewed the Parties' extensive briefing, notices of supplemental authority, and the relevant record, the Court finds oral argument unnecessary. *See* LCR 7(b)(4). The Court DENIES

UNITED STATES DISTRICT COURT  
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1 Plaintiffs' request for permissive joinder, GRANTS Plaintiffs' request for relief from the motion to  
 2 dismiss response deadline, GRANTS Defendants' motion to dismiss, and ORDERS this case  
 3 DISMISSED WITH PREJUDICE for lack of subject matter jurisdiction. The Court further STRIKES AS  
 4 MOOT Plaintiffs' remaining motions for judicial notice.

5 **I. BACKGROUND**

6 Plaintiff Christopher King is a journalist and advocate for legal recreational cannabis use  
 7 in Washington state, and Plaintiff John Novack is a Washington resident who uses retail  
 8 marijuana for medicinal purposes (collectively, "Plaintiffs"). Dkt. No. 93 at ¶¶ 3-4. Plaintiffs  
 9 "routinely purchase cannabis products and pay[] the requisite sales tax to do so." *Id.* On  
 10 October 9, 2020, Plaintiffs filed a complaint against Defendants Washington State Liquor and  
 11 Cannabis Board ("LCB"), Jane Rushford, Chair of LCB, and Rick Garza, Director of LCB  
 12 (collectively "LCB Defendants"). Dkt. No. 1. The same day, Plaintiffs filed a motion for  
 13 preliminary injunctive relief. Dkt. No. 2. A week later, Plaintiffs filed a First Amended  
 14 Complaint ("FAC") adding defendants Jay Inslee, Governor of Washington; Robert Ferguson,  
 15 Washington State Attorney General (along with LCB Defendants, collectively "State  
 16 Defendants"); William P. Barr, United States Attorney General; and the Office of National Drug  
 17 Control Policy (collectively "Federal Defendants"). Dkt. No. 7.

18 In their FAC, Plaintiffs alleged that Washington state law limits the authority of LCB  
 19 peace officers to the enforcement of liquor statutes, prohibiting LCB officers from enforcing  
 20 criminal cannabis statutes. *Id.* at 6, ¶¶ 14-16 (citing RCW 66.44.010). Plaintiffs also alleged that  
 21 LCB routinely acts beyond its statutory authority by allowing agents who do not have Basic Law  
 22 Enforcement Academy ("BLEA") certification or training to enforce criminal cannabis statutes.  
 23 *Id.* at 7, ¶¶ 18-19 (citing RCW 10.93). Plaintiffs further claimed "the LCB imperils cannabis  
 24 users by failing to conduct periodic testing to detect impurities, mold and other contaminants."

1 *Id.* at 13, ¶ 49. Plaintiffs sought declaratory and injunctive relief for what they alleged were  
 2 “Substantive and Procedural Due Process violations occurring under the Fifth and Fourth  
 3 Amendment and 42 U.S.C. §1983.” *Id.* at 17-18.

4 On November 19, 2020, State Defendants moved to dismiss the action based on the FAC  
 5 for lack of subject matter and personal jurisdiction. Dkt. No. 28. Plaintiffs failed to timely  
 6 respond. Almost two months later, on February 1, 2021, Plaintiffs moved to extend the time to  
 7 respond to State Defendants’ motion, claiming that “they did not see any Notification of a  
 8 Motion to Dismiss.” Dkt. No. 29. State Defendants opposed extending the response deadline  
 9 (Dkt. No. 34), but only after Plaintiffs had already filed their proposed opposition briefing (Dkt.  
 10 No. 32). While the motion to dismiss was pending, Plaintiffs voluntarily dismissed the Federal  
 11 Defendants. Dkt. No. 56. Plaintiffs also requested leave to further amend their complaint (Dkt.  
 12 No. 71), which State Defendants (hereinafter, “Defendants”) opposed as well (Dkt. No 77).

13 On September 8, 2021, the Court entered an order granting Plaintiffs relief from the  
 14 response deadline and granting Defendants’ motion to dismiss.<sup>1</sup> *See generally* Dkt. No. 91. Most  
 15 pertinently, the Court found that none of Plaintiffs’ allegations arose under or required resolution  
 16 of a substantial question of federal law. *Id.* at 8. The Court therefore lacked subject matter  
 17 jurisdiction under 28 U.S.C. § 1331. *Id.* The Court further held that the state of Washington had  
 18 not waived Eleventh Amendment immunity and dismissed all claims against the LCB and the  
 19 state officials in their official capacities. *Id.* at 10. The Court also found Plaintiffs failed to assert  
 20 facts showing any individual Defendant in their personal capacities had deprived Plaintiffs of  
 21 any Constitutional rights and were therefore entitled to qualified immunity. *Id.* at 11.  
 22 Additionally, although the Court granted Plaintiffs relief from the missed response deadline and  
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24 <sup>1</sup> The Court’s order also denied Plaintiffs’ motion for preliminary injunction. Dkt. No. 91 at 4-6.

1 considered their prematurely filed opposition briefing in deciding the motion to dismiss, the  
 2 Court warned Plaintiffs that it would not “hesitate to strike or deny any untimely pleadings in the  
 3 future.” *Id.* at 7. Owing to their *pro se* status, the Court gave Plaintiffs three weeks to file an  
 4 amended complaint that resolved the deficiencies noted in its order. *Id.* at 11. Consequently, the  
 5 Court denied as moot Plaintiffs’ earlier motion to amend. *Id.* at 12.

6       Shortly before the Court entered its order, Plaintiffs filed a motion requesting permission  
 7 to join an additional *pro se* Plaintiff. Dkt. No. 84. The proposed additional Plaintiff, Cynjo  
 8 Raylene Hall, is a Washington taxpayer who works as a “budtender” in Washington’s retail  
 9 cannabis industry. *Id.* at 1; Dkt. No. 89 at 1-2. Ms. Hall was apparently subjected to criminal  
 10 prosecution in Snohomish County District Court by LCB enforcement agents for allegedly  
 11 selling cannabis to under-age individuals, although her criminal case was ultimately dismissed  
 12 without prejudice. Dkt. Nos. 84 at 2; 89 at 2. Defendants oppose the joining of Ms. Hall as an  
 13 additional Plaintiff. *See generally* Dkt. No. 87.

14       On September 21, 2021, within the time to amend allotted by the Court but before a  
 15 decision was entered on their joinder motion, Plaintiffs filed their Second Amended Complaint  
 16 (“SAC”). Dkt. No. 93. In the SAC, Plaintiffs include factual allegations regarding Ms. Hall’s  
 17 claims against Defendants, as well as reiterating their own claims. *See generally id.* Plaintiffs add  
 18 allegations regarding the LCB’s involvement in a federal “Asset Forfeiture Program” in  
 19 conjunction with the U.S. Department of Justice. *Id.* at ¶¶ 14-15. In addition to requests for  
 20 similar declaratory and injunctive relief as were included in the FAC, Plaintiffs also request  
 21 “Assessment of Compensatory and Punitive Damages” for both Ms. Hall and Mr. Novak. *Id.*  
 22 at 30. The Court notes that Plaintiffs do not include a request for damages for Mr. King.

23       On October 5, 2021, Defendants timely filed a motion to dismiss arguing that Plaintiffs’  
 24 SAC fails to cure the subject matter and personal jurisdiction deficiencies noted in the Court’s

1 prior order. *See generally* Dkt. No. 95. Per LCR 7(d)(3), Plaintiffs' opposition to the motion to  
 2 dismiss was due by no later than Monday, October 25, 2021. Plaintiffs again failed to timely  
 3 respond. Instead, on November 1, Plaintiffs filed a pleading stylized as "Plaintiffs' Request to  
 4 Instanter File their Memorandum in Opposition to Defendants' Motion to Dismiss." Dkt.  
 5 No. 101. The next day, Plaintiffs filed a response in opposition to the motion to dismiss. Dkt.  
 6 No. 102. Three days later, Defendants filed a reply brief in response to Plaintiffs' opposition.  
 7 Dkt. No. 104.

8       Also pending before the Court are two ancillary motions filed by Plaintiffs asking the  
 9 Court to take judicial notice under Federal Rule of Evidence 201 of an opinion piece published in  
 10 the South Seattle Emerald (Dkt. No. 75) and filings from two other cases involving Defendants  
 11 (Dkt. No. 94). Defendants oppose these motions as well. *See generally* Dkt. Nos. 79, 98.

## 12                   II.    DISCUSSION

### 13                   A.    Plaintiffs' Motion for Permissive Joinder

14       Federal Rule of Civil Procedure 20 permits the joinder of plaintiffs in one action when  
 15 "(A) they assert any right to relief jointly, severally, or in the alternative with respect to or  
 16 arising out of the same transaction, occurrence, or series of transactions or occurrences; **and**  
 17 (B) any question of law or fact common to all plaintiffs will arise in the action." Fed. R. Civ. P.  
 18 20(a)(1) (emphasis added). Plaintiffs must satisfy both prongs of the test for permissive joinder.  
 19 *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997). Plaintiffs fail to show that Ms. Hall's  
 20 claims arise out of the same transaction or occurrence as any of their claims.

21       According to Plaintiffs' joinder motion, and the allegations Plaintiffs prematurely  
 22 included in their SAC, Ms. Hall's claims arise out of her prosecution in Washington state court  
 23 for allegedly selling cannabis to under-age individuals. *See* Dkt. Nos. 84 at 3-5; 89 at 2; *see also*,  
 24 *e.g.*, 93 at 3-4, and ¶¶ 6, 8, 42-43, 51 n.9. There are no facts included in any of Plaintiffs'

1 pleadings establishing that Ms. Hall's claims arise out of the same transaction or occurrence as  
 2 either Mr. King's or Mr. Novak's claims. Ms. Hall seeks compensatory and punitive damages  
 3 relating to her experience as a budtender "who was subjected to Unconstitutional conduct by  
 4 unauthorized personnel at the LCB . . . who work together with Federal Agents." Dkt. No. 93  
 5 at 30. However, Plaintiffs fail to plead any facts indicating that either Mr. King or Mr. Novak  
 6 were ever budtenders, and Mr. King has not been subject to prosecution under Washington's  
 7 cannabis laws. Mr. Novak appears to have had a case brought against him stemming from a raid  
 8 on his home garden that occurred in 2010 but the case was dismissed in 2012. *Id.* at ¶¶ 98-99.  
 9 Further, Plaintiffs' own allegations in the SAC highlight that the transactions or occurrences they  
 10 challenge are "each from a different area of failed Jurisdiction [sic] at LCB." *Id.* at ¶ 26. At best,  
 11 Plaintiffs' pleadings suggest that Ms. Hall's "claims are clearly aligned with Plaintiffs" (Dkt.  
 12 No. 89 at 2), in that she shares an interest in their preferred interpretation of the relevant  
 13 Washington statutes (*i.e.*, that LCB agents cannot enforce Washington's criminal cannabis  
 14 statutes). While this might meet the common question of law prong for joinder, it fails to satisfy  
 15 the same transaction or occurrence requirement for permissive joinder.

16 Since Plaintiffs fail to make the appropriate showing under the federal rules for  
 17 permissive joinder, their motion to join Ms. Hall is DENIED.

18 **B. Plaintiffs' Request for Relief from the Motion to Dismiss Response Deadline**

19 Despite the Court's prior warning to Plaintiffs about missing filing deadlines (*see* Dkt.  
 20 No. 91 at 7), Plaintiffs again failed to timely respond to Defendants' motion to dismiss.  
 21 Defendants filed their motion to dismiss on October 5, 2021, with a noting date of October 29 as  
 22 required by Local Civil Rule 7. Plaintiffs' deadline to respond was the Monday before the noting  
 23 date, or October 25, 2021. LCR 7(d)(3). Because Plaintiffs failed to oppose the motion,  
 24 Defendants did not file a reply by the October 29 noting date.

1       This time around, Plaintiffs realized their mistake within a few days of the motion noting  
2 date and filed their request for permission to file an untimely response on November 1, 2021.  
3 Dkt. No. 101. Before the Court could rule on their request, Plaintiffs filed their untimely  
4 response on November 2, 2021. Dkt. No. 102. That same day, Defendants filed an opposition to  
5 Plaintiffs' request for relief from the response deadline. Dkt. No. 103. Defendants also filed a  
6 reply brief responding to Plaintiffs' untimely opposition to their motion to dismiss. Dkt.  
7 Nos. 105, 106.

8       The Local Civil Rules allow the Court to consider Plaintiffs' failure to timely oppose  
9 Defendants' motion to dismiss "as an admission that the motion has merit." LCR 7(b)(2). The  
10 Court warned Plaintiffs that missing filing deadlines could have serious consequences, including  
11 the Court striking or denying any untimely pleading. Dkt. 91 at 7. That said, the Court  
12 acknowledges that this time Plaintiffs quickly recognized their mistake and did not delay in  
13 attempting to correct it. Additionally, Defendants have not been prejudiced, as they were able to  
14 file their reply with the Court for consideration as well. Therefore, in the interest of ruling on the  
15 merits, the Court GRANTS Plaintiffs' request for relief from the response deadline and will  
16 consider both Plaintiffs' opposition and Defendants' reply briefing in determining the motion to  
17 dismiss.

18       **C. Defendants' Motion to Dismiss**

19       Defendants renew their motion to dismiss on both subject matter and personal jurisdiction  
20 grounds, arguing that Plaintiffs' SAC fails to cure the deficiencies noted by the Court in its prior  
21 order dismissing Plaintiffs' claims. Dkt. No. 95 at 1-2. Subject matter jurisdiction is typically  
22 considered before personal jurisdiction or other defects in the pleadings because it cannot be  
23 waived and must exist for a court to consider the merits of a case. *See Ruhrgas AG v. Marathon*  
24

1 *Oil Co.*, 526 U.S. 574 (1999); *see also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83  
 2 (1998).

3 **1. Subject Matter Jurisdiction**

4 District courts have “original jurisdiction of all civil actions arising under the  
 5 Constitution, laws, or treatises of the United States.” 28 U.S.C. § 1331. It is Plaintiffs’ burden to  
 6 establish the existence of federal subject matter jurisdiction. *Chandler v. State Farm Mut. Auto.*  
 7 *Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010). When reviewing a motion to dismiss, the Court  
 8 “must accept all factual allegations of the complaint as true and draw all reasonable inferences in  
 9 favor of the nonmoving party.” *Bernhardt v. Cnty. of Los Angeles*, 279 F.3d 862, 867 (9th Cir.  
 10 2002) (internal citation and quotations omitted). To determine whether a case has federal  
 11 question jurisdiction, a court must consider “if a well-pleaded complaint establishes either that  
 12 federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on  
 13 resolution of a substantial question of federal law.” *Empire Healthchoice Assur., Inc. v.*  
 14 *McVeigh*, 547 U.S. 677, 690 (2006) (internal quotations and citation omitted).

15 In its prior order, the Court found that “Plaintiffs’ claims and requested relief all depend  
 16 on the interpretation of Washington state laws. . . . [and] [t]heir right to relief wholly depends on  
 17 resolution of Washington state law.” Dkt. No. 91 at 8-9. Plaintiffs therefore failed “to  
 18 demonstrate that the case invokes federal question jurisdiction under 28 U.S.C. § 1331” in their  
 19 FAC. *Id.* Defendants now argue that Plaintiffs’ SAC fails to cure these defects.

20 The Court finds that, as in their FAC, Plaintiffs have failed to establish that any of their  
 21 claims in their SAC assert a federal cause of action or require the resolution of a substantial  
 22 question of federal law. All of Plaintiffs claims for relief still fundamentally rely on the  
 23 interpretation of Washington state statutes regulating the state’s retail cannabis industry.  
 24 Specifically, Plaintiffs continue to challenge (1) whether the LCB has criminal enforcement

1 authority with respect to the cannabis regulations, (2) whether LCB officers are peace officers as  
 2 defined by Washington law, and (3) whether Washington's statutory cannabis quality assurance  
 3 and testing requirements are not being appropriately implemented so medical cannabis  
 4 consumers are unable to procure the strains needed to treat their conditions. *See generally* Dkt.  
 5 No. 93. The Court already addressed these claims (Dkt. No. 91) and nothing in the SAC on these  
 6 issues disturbs the reasoning laid out in that Order.

7 Plaintiffs attempt to assert that federal question jurisdiction has been met in their SAC  
 8 based on the addition of allegations regarding: (1) Ms. Hall's alleged federal due process claims  
 9 arising from her criminal prosecution initiated by LCB enforcement officers, (2) LCB's  
 10 participation in what Plaintiffs term a federal "Asset Forfeiture Program," and (3) interference  
 11 with Mr. Novak's alleged Constitutionally protected right to make medical decisions as a  
 12 medical cannabis user. *See generally* Dkt. No. 102; *see also* Dkt. No. 93 at 2-5.

13                   ***a) Plaintiffs' claims are not saved by Ms. Hall's allegations.***

14                   As noted in Section II.A above, Plaintiffs failed to meet their burden to join Ms. Hall as  
 15 an additional plaintiff in this case. As such, none of the allegations prematurely included in the  
 16 SAC regarding Ms. Hall can save their respective state-law dependent claims. Even if Ms. Hall's  
 17 claims were added, however, they suffer the same issue as the claims in the FAC as they turn on  
 18 the interpretation of Washington state statutes regulating the state's retail cannabis industry.

19                   ***b) Plaintiffs' fail to assert a federal cause of action or substantial  
 20 question of federal law based on the LCB's alleged participation  
 21 in the federal Asset Forfeiture Program.***

22                   Even if taken as true, Plaintiffs' allegations regarding LCB's participation in the federal  
 23 Asset Forfeiture Program are insufficient to establish subject matter jurisdiction. Plaintiffs  
 24 provide no case law or federal statute giving rise to a federal cause of action in relation to the

alleged Asset Forfeiture Program. Nor do Plaintiffs allege that they have ever been subject to or harmed in any way because of LCB's participation in the federal program. At best, their allegations amount to conclusory claims of hypothetical Constitutional violations that could potentially befall a Washington cannabis user, which fail to meet federal pleading requirements.

*See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007) (holding that “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of a cause of action’s elements will not do.”).

Nor does Plaintiffs' requested relief rely on the resolution of a substantial question of federal law. Plaintiffs request a declaration that LCB unlawfully participates in the Asset Forfeiture Program because it is not a law enforcement agency. Dkt. No. 93 at ¶ 24. Plaintiffs admit, though, that the scope of LCB's authority as a law enforcement agency is a question of state law, not federal law. Dkt. No. 102 at 14 (noting that "*State Law was and is clear – there was no authority*" (emphasis original)).

c) *Plaintiffs' claims based on a Constitutional right to be free from interference in personal medical decisions also fail to establish federal subject matter jurisdiction.*

Plaintiffs' final attempt at asserting federal question jurisdiction is premised on Mr. Novak's status as a medical cannabis user.<sup>2</sup> Plaintiffs argue that Defendants' failure to appropriately implement the statutory requirements for quality control and testing found in its cannabis regulations has interfered with Mr. Novak's alleged Constitutional right to make medical decisions because he has been unable to find the same strains of unadulterated cannabis

<sup>2</sup> As with Ms. Hall's claims, even if the Court found it had subject matter jurisdiction over Mr. Novak's alleged Constitutional claim, that determination would not necessarily save any of Mr. King's individual state-law dependent claims as the SAC does not assert that Mr. King is also a medical cannabis user.

1 in Washington's retail market that were available prior to the adoption of I-502. Dkt. No. 93  
 2 at ¶¶ 85-104.

3 Plaintiffs' legal authority is inapplicable. Plaintiffs cite to a law review article that *argues*  
 4 for recognition of a federal Constitutional right for individuals to make medical decisions that  
 5 overrides legislative prohibitions against a chosen treatment option (*i.e.* medical cannabis use).

6 See Dkt. Nos. 93 at 4; 102 at 22-23; *see also* B. Jessie Hill, *The Constitutional Right to Make*  
 7 *Medical Treatment Decisions: A Tale of Two Doctrines*, 86 Tex. L. Rev. 277, 282 (2007).

8 Notably, neither Plaintiffs nor the law review article provide any authority establishing that such  
 9 a Constitutional right already exists. Instead, Plaintiffs cite cases, which were included in the  
 10 article, involving the intersection of federal drug law and state medical cannabis regulations as  
 11 compared to federal Constitutional challenges to state laws restricting abortions. See Dkt.  
 12 No. 102 at 23 (citing *United States v. Cannabis Cultivators Club*, 5 F. Supp. 2d 1086 (N.D. Cal.  
 13 1998); and *Doe v. Bolton*,<sup>3</sup> 410 U.S. 179, 183 (1973)).

14 In this case, there is no federal intrusion into Mr. Novak's medical cannabis use  
 15 decisions. Cannabis use is illegal for any purpose under federal law. See 21 U.S.C. § 812(b)(1);  
 16 21 C.F.R. § 1308.11(31). Thus, Mr. Novak's right to use cannabis to treat his medical condition  
 17 cannot arise under federal law, and his complaints about not being able to access his preferred  
 18 strains of cannabis to treat his condition are indisputably a matter of state law. Instead, Mr.  
 19 Novak takes issue with the State Defendants' implementation of Washington state statutes  
 20 regarding quality control and testing of cannabis products that are sold in Washington retail

21  
 22  
 23 <sup>3</sup> The Court notes that *Bolton* is in the line of cases that was abrogated by the U.S. Supreme Court's recent decision  
 24 in *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022), which dramatically altered the legal landscape  
 that was analyzed by the cited law review article in 2007 regarding the constitutionality of medical abortion  
 decisions. That said, the *Dobbs* decision has no relevance to the issue at bar in this case.

1 cannabis dispensaries. Thus, Mr. Novak's right to relief wholly depends on resolution of  
2 Washington state law.

3 Plaintiffs' SAC fails to cure the deficiencies identified in the Courts' prior order  
4 dismissing their claims for lack of subject matter jurisdiction. Therefore, the Court GRANTS  
5 Defendants' motion to dismiss and ORDERS this case DISMISSED WITH PREJUDICE.

6 **2. Personal Jurisdiction**

7 Because the Court finds that it lacks subject matter jurisdiction, it need not address  
8 Defendants' arguments regarding personal jurisdiction. That said, the Court finds nothing in  
9 Plaintiffs' SAC that overcomes the defects in Plaintiffs' claims that were previously noted by the  
10 Court. *Compare* Dkt. No. 91 at 9-12 *with generally* Dkt. No. 93.<sup>4</sup>

11 **D. Plaintiffs' Evidentiary Motions**

12 Because the Court finds that it lacks subject matter jurisdiction and dismisses this case  
13 with prejudice, it further DENIES AS MOOT Plaintiffs' remaining motions requesting the Court take  
14 judicial notice of specified documents under Evidence Rule 201 (Dkt. Nos. 75, 94) and ORDERS  
15 them to be struck from the Court's hearing calendar.

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21 <sup>4</sup> Plaintiff's sole argument in opposition to Defendants' renewed motion to dismiss on personal jurisdiction grounds  
22 is that Defendants allegedly waived Eleventh Amendment immunity in a case in a different district. Dkt. No. 102  
23 at 19-21 (citing *Perry Failing v. WSLCB*, 2:20-CV-26TOR (WAED)). The state's waiver of Eleventh Amendment  
24 immunity in that action cannot be imputed as a waiver in this separate action. *See, e.g., Tegic Commc'n Corp. v. Bd.  
of Regents of Univ. of Texas Sys.*, 458 F.3d 1335, 1342 (Fed. Cir. 2006) ("We agree with the University that its filing  
of the Texas action did not establish waiver as to this separate action."). To waive Eleventh Amendment immunity, a  
state "must unequivocally evidence [its] intention to subject itself to the jurisdiction of the federal court." *Hill v.  
Blind Indus. & Servs. of Maryland*, 179 F.3d 754, 758 (9th Cir.), *opinion amended on denial of reh'g*, 201 F.3d 1186  
(9th Cir. 1999). Washington has never evidenced an intent to waive immunity in this action.

### III. ORDER

For the reasons stated herein, the Court:

1. STRIKES AS MOOT Plaintiffs' motions for judicial notice (Dkt. Nos. 75 and 94);
2. DENIES Plaintiffs' motion for permissive joinder (Dkt. No. 84);
3. GRANTS Plaintiffs' request for relief from the motion to dismiss response deadline (Dkt. No. 101);
4. GRANTS Defendants' motion to dismiss (Dkt. No. 95); and
5. ORDERS this case DISMISSED WITH PREJUDICE for lack of subject matter jurisdiction.

Dated this 11th day of August 2022.

Tana Lin  
Tana Lin  
United States District Judge